

## **REMARKS/ARGUMENTS**

### **1. Summary of the Office Action**

Claims 1-5, 9, 10, 12, 13, 15, 16 and 20-23 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,757,255 (hereinafter Aoki).

Claims 6-8, 11, 14, 17-19, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **2. Response to 35 U.S.C. § 102(e) Rejections**

In response to the above-identified Office Action, the Applicants have amended the claims and respectfully request reconsideration thereof. The amended claims are each supported by the specification as filed, page 17, [0041] and claim 11. Therefore, no new matter is added.

*To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987).*

Applicants contend that each and every element of the present claim is simply not found in Aoki. Aoki teaches a TCP communications performance measuring device to obtain an effective bandwidth representing performance in TCP communications, wherein the performance indexes are obtained based on TCP communications variable-length packets transmitted and received, and any one of an average congestion window size, a packet discard rate and a packet discard event rate (Aoki, Abstract).

However, Aoki does not teach the present claims which have been amended to include the feature of “modifying an initial congestion window size for the traffic stream **up to an advertised window size of a client receiving the traffic stream**” (Claim 1; emphasis added). Indeed, Aoki is only concerned with calculating an effective bandwidth based on a maximum congestion window size (Aoki, Col. 11, lines 29-33). It will be noted that a maximum congestion

window is not equivalent to an advertised window size of a client receiving the traffic stream. Clearly, Aoki fails to teach or even suggest each and every element of the present claims. Therefore, the present claims are patentable over Aoki.

3. **Conclusion**

Having tendered the above remarks and amended the claims as indicated herein, the Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Jaina Chua at (408) 947-8200.

Respectfully submitted,

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